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Forty-seventh session
Agenda item 10

QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT

Written statement submitted by World University Service, a non-governmental organization in consultative status (Category II)

The Secretary-General has received the following communication which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[20 February 1991]

Statement on behalf of the coalition against impunity and its non-governmental members

1. World University Service is a founding member of the Non-governmental Organizations Coalition against Impunity, a group concerned with the trend of granting pardons, amnesty laws or allowing de facto impunity to military violators of human rights. We have addressed on several occasions the Commission on Human Rights, its Sub-Commission on Prevention of Discrimination and Protection of Minorities, the Working Group on Enforced or Involuntary Disappearances, and the Secretary-General of the United Nations, to solicit the United Nations bodies dealing with human rights issues to consider the phenomenon of impunity and to create guidelines for States and societies.

2. Unfortunately, only the Working Group has expressed its opinion on the matter. Last year, in its report to the forty-sixth session of the Commission on Human Rights, the Working Group stated:

> "Perhaps the single most important factor contributing to the phenomenon of disappearances may be that of impunity. The Working Group's experience over the past ten years has confirmed the age-old adage that impunity breeds contempt for the law. Perpetrators of human rights violations, whether civilian or military, will become all the more brazen when they are not held accountable before a court of law."

3. Meanwhile, the trend of impunity continues, trampling upon justice and distorting reconciliation processes. The Commission on Human Rights must no longer ignore this phenomenon, but rather take measures to confront it.

4. Impunity means, literally, freedom from punishment. To act with impunity means to act with the knowledge that one is above the law.

5. Impunity means there that acts of State terror and repression by military/security forces against their own people are shielded from judgement or accountability before national law. International lawyers argue that while the State, as the offended party, may forgive crimes against itself, it cannot unilaterally forgive crimes it committed as the offender against its own citizens. Another key principle in international law is the continuity of the State: a change in government does not change the binding nature of the State's international legal obligations. Yet many amnesties passed to absolve military and security forces violate one or both of these principles.

6. Impunity has been effected, whether through unilateral amnesties passed by the military to forgive itself, amnesty laws passed by civilian governments, de facto situations of impunity, pardons or institutionalized "national security" constitutions and laws.

7. Proponents of amnesty and forgiveness put two main arguments forward. First, impunity is a necessary price for transition to civilian rule. Military régimes would refuse to step down without guarantees of immunity from prosecution. Second, in fragile new civilian régimes, attempts to try military officers have a destructive and destabilizing effect. The military is likely to rebel, overthrow the civilian régime and return the country to the dark days of repression. According to this argument, absolution is a means to pacify the political situation and defuse social conflict, trading revenge and retribution for peace and democracy.

8. We, critics of impunity, on the other hand, charge that it allows no legal or moral recourse for societies that have suffered rule by terror under national security régimes. Societies are robbed of the means to condemn and reject systematic military atrocities against society itself; political expediency triumphs over requirements of justice. Crimes against humanity (extrajudicial execution, disappearance and torture) and war crimes condemned under international law (massacres, murdering captured prisoners and bombings of civilian populations) are absolved by governmental elites (not the victims) in the name of reconciliation and democracy. A culture of fear persists, as many officers and individuals known to have committed crimes remain free, and often in high-ranking positions. The fear remains that terror might recur.

There is no price for abhorrent crimes; there is no deterrence to protect human rights and liberties in the future. The moral fabric of society is corroded.

9. We believe that impunity has concrete effects upon military consciousness as well. Military and security forces, secure in the knowledge that impunity exists, often continue to act against any perceived opposition in violent and lawless ways, especially in situations of economic crisis or political challenge. The militaries interpret impunity as tacit approval of their methods, justified by reasons of "national security", "the war against subversion", etc. Thus the military/security forces remain a State within the State, beyond the reaches of law and civilian control. A culture of repression persists.

10. On the national level, there is evidence that impunity does not promote reconciliation or democratization, but rather undermines the rule of law and constitutional structures, weakens civilian authority and perpetuates social divisions. Impunity may have the opposite effect than desired by strengthening the military and encouraging increased perceptions of immunity, contempt for civilian rule and self-righteousness. Basic principles of democracy, such as military subordination to civilians, due process and equality under the law are violated. Impunity allows the military institution to remain autonomous and above the law, a dominant political actor in the society. International agreements and treaties such as the International Covenant on Civil and Political Rights, the Genocide Convention, and the Convention on Torture are ignored.

11. A final word on impunity. The pragmatic argument for impunity is based upon a notion of ends and means: the end of stable democracy depends on the means of impunity. Yet the means utilized to construct any system deeply shape its end. A society that silences cries for justice, and allows torturers and assassins to operate freely, is a society that faces a dubious future. A society that has been deeply scarred must come to terms with its past and settle accounts with its tormentors. Societies aspiring to democracy and justice cannot be built upon a foundation of amorality, unpunished crimes, and official amnesia.

12. We urgently request the Commission on Human Rights to initiate a debate on the issue of impunity, with a view to banning it. We would very much like to see a resolution approved at this forty-seventh session - and we are willing to contribute to its formulation. In any case, we call upon the Commission on Human Rights to take a decision at this session instructing the Sub-Commission on Prevention of Discrimination and Protection of Minorities to study the issue in-depth and to present proposals for the consideration of the Commission at its forty-eighth session.

Notes

(a) Members of the Steering Committee of the Coalition Against Impunity are:

World University Service - United States
Service for Peace and Justice/SERPAJ
Federation of the Relatives of the Disappeared/FEDEFAM
International Association Against Torture
International League for the Rights and Liberation of Peoples, North American Chapter

Other members:

Guatemala Human Rights Commission, Mexico
Asamblea Permanente por los Derechos Humanos, Argentina
Centro de Documentacion e Informacion/CEDOIN, Bolivia
Centro de Estudios Legales y Sociales/CELS, Argentina
Co-ordination of Human Rights in Latin America, Australia
Grupo de Apoyo Mutuo/GAM, Guatemala
Centro de Investigaciones y Educacion Popular/CINEP, Columbia
Abuelas de Plaza de Mayo, Argentina

(b) This statement has drawn upon an article entitled "From National Security States to Militarized Civilian Governments: Confronting the Legacy of Repression" by J. Patrice McSherry.